Jason Wied

Packers, Vice President of Administration/Corporate Counsel

Jason Wied, the Packers' corporate counsel since 2001, in 2007 begins his first year as the organization's vice president of administration/corporate counsel.

Named to the position April 3, 2007, Wied's expanded responsibilities include representing the Packers at NFL meetings, as well as the day-to-day management of the team's administrative operations, including retail operations, Atrium operations, community outreach, information technology, public relations, facility operations and security. He'll continue to oversee the team's corporate legal matters and work closely with the Board of Directors and Executive Committee.

"Jason's contributions to the organization have grown each year and he will continue to play a significant role in our club's leadership structure," said Packers Chairman Bob Harlan. "His previous work on the organization's legal matters and administrative responsibilities has been outstanding. Also, he's a Green Bay native and therefore has a great feel for the unique nature of the franchise. We look forward to his continued important counsel on key issues for the Packers."

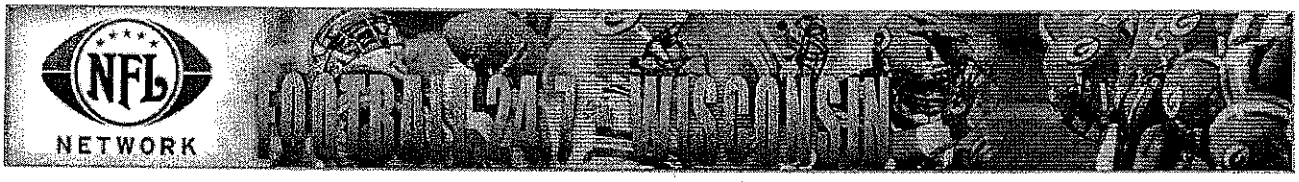
Wied (pronounced WEED) joined the Packers Sept. 18, 2000, as staff counsel after practicing civil litigation and business law for two years (1998-2000) at the law firm of Liebmann, Conway, Olejniczak & Jerry, S.C., in Green Bay. He was promoted to corporate counsel a year later.

A Green Bay native, Wied, 35, graduated from Green Bay Premontre High School (1990), where he played football and hockey. He then graduated from the University of Wisconsin-Madison (1995, B.A. psychology) and from Marquette University Law School (1998). His early work with the team included coordination of the construction and lease negotiations involving the redevelopment of Lambeau Field as well as the team's successful application for the NFL's G-3 stadium funding. In addition to managing the team's corporate legal matters, he also guided strategic media and sponsorship agreements associated with the redeveloped stadium.

Wied continues to be involved in Wisconsin's legal community as he serves on the State of Wisconsin's Agent Advisory Committee.

Active in the community, Wied is a member of the board of directors of the Heritage Hill Foundation and a member of the executive committee of the Green Bay Chamber of Commerce. He is a member of the Green Bay Gamblers (USHL) advisory board and is a past member of the board of directors of the Green Bay Marathon.

Wied and his wife, Melissa, live in Green Bay with their three children: two sons, Jack, 10, and Henry, 6, and a daughter, Rae, 4. Away from work, he coaches youth hockey and baseball, and also enjoys reading, playing golf, hockey and racquetball, as well as spending time with his family.



Green Bay Packers Super Fans Testifying in Favor of the FAN Act

Helen McCollum, Helen's Happy Home

Helen McCollum, owner of Helen's Happy Homes – a senior care home – is a Wisconsin native, born in Elkhorn, Wisconsin. As a certified nursing associate, she has spent most of her life taking care of those with physical handicaps and cognitive disabilities, working with dementia and Alzheimer's patients.

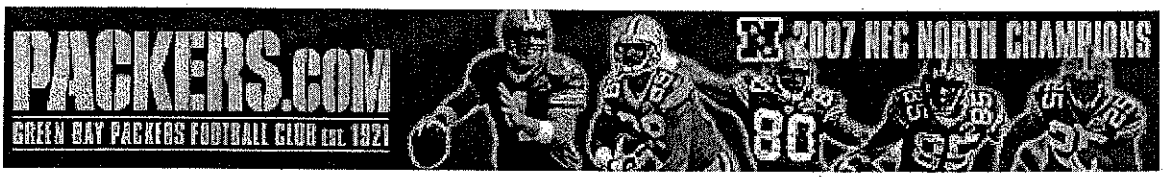
Helen's Happy Home houses eight residents in Deerfield, Wisconsin.

Helen has been a lifelong Packers fan and her family has been involved with Madison Packer Backers for over twenty years. Helen is a mother to three children and has seven grandchildren.

Rooty Leigh, Founder of Madison Packer Backers

Rooty Leigh, a lifelong Wisconsin resident and Packers fan, was born in the Wisconsin Dells area. She attended business college in Madison and worked for the Dane County Clerk's office for most of her life, serving as the chief deputy to the clerk.

Rooty, and her late husband Earl, founded Madison Packer Backers in 1967. The group has grown substantially over the years and Rooty still plans trips to Green Bay for every Packers home game. The group also charters planes for away games, as well as plans trips to Super Bowls and to other football-related events.



Kathy Lazzaro Named Eighth Member Of Packers FAN Hall Of Fame

posted 12/16/2005

Kathy Lazzaro of Milwaukee was named the eighth member of the **Green Bay Packers FAN Hall of Fame** Friday.

Lazzaro was nominated by Joseph M. Fasi II of Brookfield, Wis., who met her earlier this year when he joined her for a drive to Green Bay for the home opener, Sept. 18, vs. Cleveland.

In his nomination letter, Fasi said, "I have in the past read about the ultimate fan and thought I knew some. However, when I met Kathy Lazzaro this year, I finally found the living definition of the ULTIMATE FAN.

"Kathy Lazzaro is a wonderful, soft-spoken woman about 60 years old. She has been a widow for the last 5 years. She NEVER misses a home game, driving up to Green Bay with her son Joseph. My daughter and I shared a ride to Green Bay with Kathy and her son to the Browns game. As we drove to Green Bay, I found out that her home is a Packers shrine set up in a room with green and gold and icons to honor her beloved Packers past and present. She never leaves the TV during a game.

"She did not miss a game when her husband, Joseph, died 5 years ago. She knew that he would have wanted her at the games, since that was her second lover after her husband. There are many fans dressed in team colors, who attend the games or have a room decorated for the Pack. What sets Kathy apart and makes her an exceptional candidate for the Green Bay Packers Fan Hall of Fame is her spirit.

"A fan is one who always believes in the team and sticks with them no matter whether they are winning or losing. Kathy is that fan. She loves HER Packers and will not leave them at any time, in any weather, despite the record or score on the board. She will not leave the game early and will not speak ill of her team. That goes beyond the colors, clothing, jewelry, photos and pennants. That is the spirit and living definition of a fan. I was in awe of what I saw and heard when I met her and I encourage you to meet her as well. She is for real. These pages cannot adequately capture or contain the spirit and essence of this SUPER FAN. One meeting would convince you as it did for me."

Lazzaro will receive four club seats to the Jan. 1 Packers-Seahawks game, at which she will be recognized on the Lambeau Field TundraVision video boards, a $500 Packers Pro Shop gift certificate and a road trip for two to a 2006 Packers away game, including game ticket, air fare and hotel accommodation. She also will be introduced during the Packers Hall of Fame Induction Banquet next July and have her name permanently displayed in a place of honor in the Packers Hall of Fame.

Balloting for the FAN Hall of Fame, international in scope, yielded thousands of votes from throughout the United States and countries around the world.

This year's finalists, in addition to Lazzaro, included Rudy Carmenaty, Massapequa Park, N.Y.; Caroline B. Comella, Appleton, Wis.; Bob Esch, Caledonia, Minn.; Jeff Kahlow, Fond du Lac, Wis.; Patrick Finkler, Reading, Mass.; Thomas P. Hay, Sun Prairie, Wis.; Frank Parks, Newfield, N.J.; Ray Schrader, Wabeno, Wis. and April Skony, Jupiter, Fla.

The Green Bay Packers, the first professional football team to have its own hall of fame, enhanced that distinction in 1998 by establishing a Packers FAN Hall of Fame for the purpose of annually honoring a devout and longtime Packers fan.

The seven prior inductees include Mel Knoke, Appleton, Wis.; Louis Gardipee, Black River Falls, Wis.; Ed Jablonski, Wausau, Wis.; Paul Mazzoleni, Green Bay; Wanda Boggs, Brookfield, Wis.; Sister Isaac Jogues Rousseau, Milwaukee; and Dorothy Hanke, Milwaukee.

FAN Hall of Fame sponsors are ShopKo, Stein Gardens and Gifts, Best Buy and Time Warner Cable.

Mt. Horeb Telecom Enhanced Cable Package Lineup

BASIC CHANNELS

ABC (WKOW) ... 7
CBS (WISC) ... 9
C-SPAN ... 16
C-SPAN 2 ... 17
D-TV** ... 10
Fox (WMSN) ... 8
HSN (Home Shopping Network) ... 18
Madison CW (WBUW) ... 15
MHTC Channel ... 2
Mt Horeb Local* ... 12
Mt Horeb Schools* ... 4
My Madison TV ... 14
NBC (WMTV) ... 5
PBS (WHA) ... 11
QVC ... 6
WGN ... 13

ENHANCED CHANNELS

A&E ... 46
ABC Family ... 103
AMC (American Movie Classics) ... 54
AmericanLife TV ... 63
Animal Planet ... 92
BBC America ... 68
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Bloomberg TV ... 127
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Bravo ...
Cartoon Network ...
CMT ...
CMT Pure ...
CNBC ...
CNN ...
CNN - Headline News
Comedy Central ...
Court TV ...
Discovery ...
Discovery Health ...
Discovery Home ...
Discovery Kids ...
Discovery Times ...
Disney Channel ...
E! ...
ESPN ...
ESPN 2 ...
ESPN Classic ...
ESPN News ...
EWTN (Eternal Word)
Food Network ...
Fox Movie Channel ...
Fox News Channel ...
Fox Sports Net Wisco
FX ...
G4 ...
Golf Channel ... 34
Great American Country ... 173
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Playboy Channel ... 451
Playboy Pay-Per-View ... 452

DIGITAL MUSIC CHANNELS

CD Quality Music ... 901-945

*Available in Mt Horeb/Blue Mounds.
**Available in Dodgeville.

2 MHTC Channel
4 Mt Horeb Schools*
5 NBC (WMTV)
6 QVC
7 ABC (WKOW)
8 Fox (WMSN)
9 CBS (WISC)
10 D-TV**
11 PBS (WHA)
12 Mt Horeb Local*
13 WGN
14 My Madison TV
15 Madison CW (WBUW)
16 C-SPAN
17 C-SPAN 2
18 HSN (Home Shopping Network)
21 ESPN
22 ESPN News
23 ESPN Classic
24 ESPN 2
27 Fox Sports Net Wisconsin
28 NFL Network
29 Big Ten Network
34 Golf Channel
35 Speed Channel
36 Versus
37 Outdoor Channel
85 The Science Channel
86 The Military Channel
87 The History Channel
88 TLC (The Learning Channel)
89 The Travel Channel
92 Animal Planet
93 Food Network
96 HGTV
97 G4
98 Style
101 Disney Channel
102 Toon Disney
103 ABC Family
107 Nickelodeon
108 Nick Toons
109 Noggin
110 Nick GAS (Games & Sports)
111 Cartoon Network
112 TV Land
121 CNN
122 CNN - Headline News
123 Fox News Channel
124 CNBC
125 MSNBC
127 Bloomberg TV
128 Weather Channel
150 BET
151 MTV
152 MTV2
153 MTV Jams
155 MTV Tres
164 VH-1
165 VH-1 Classic
166 VH-1 Soul
167 CMT Pure
172 CMT
173 Great American Country
198 EWTN (Eternal Word)
199 TBN (Trinity Broadcasting)
301 HBO
302 HBO 2
303 HBO Family
304 HBO Signature
321 Cinemax
322 Cinemax - More Max
351 Showtime
352 Showtime Extreme
353 Showtime Showcase
354 Showtime Too
355 Showtime Beyond
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362 TMC-Xtra
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403 Starz! Cinema
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901-945 CD Quality Music

Revised 10/29/2007

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ESPN Classic ... 23
ESPN 2 ... 24
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NFL Network ... 28
Big Ten Network ... 29
Golf Channel ... 34
Speed Channel ... 35
Versus ... 36
Outdoor Channel ... 37

MHTC Price, Enhanced Package: $50.95

*Mt. Horeb Telecom Web site: http://www.mhtc.net/

Charter Price, Big Value Package: $59.99

**Capital Times*, "More bad news about cable TV: Prices to go up" November 1, 2007

Prepared Remarks of Larry F. Darby
Darby Associates – Washington, DC
Hearing on Assembly Bill 604
before
the Assembly Committee on Energy and Utilities
January 22, 2008

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to talk with you about consumers' interests in markets for cable distribution and program production and, very importantly, the role of government in offsetting clear market imperfections. I was asked and agreed to focus on markets for cable programming and how current industry practices impact independent program producers and consumers.

Qualifications. My name is Larry Darby. I am an economic and financial analyst with a background government, academia, business and investment banking. I head a small consulting firm, Darby Associates, specializing in business and policy issues at the intersection of technology, law and markets. I was Senior Economist in the Executive Office of the President, then Chief Economist and Bureau Chief at the Federal Communications Commission before spending five years on Wall Street as VP in Lehman Brothers telecom investment banking group. I teach economics, finance, and regulation at the graduate level, consult to several public and private organizations, and have written extensively on information technology matters. I am on the board of the American Consumer Institute Center for Citizen Research, an institute committed to advancing consumer interests in public policy fora like this one. I am speaking today on behalf of myself. Expenses for my appearance today are being covered by the NFL. .

Overview of Statement. Assembly Bill 604 invokes mandatory arbitration as a means of resolving carriage disputes between cable operators and independent program suppliers. The bill addresses a current market failure that reduces consumer welfare. My remarks will reflect my support for that general approach. In that context I will address the following questions.

- *What is the consumer interest in this legislation?*
- *Are markets for cable television services "workably competitive"?*
- *Do cable companies discriminate in favor of their own programs?*
- *Should government intervene on behalf of consumers?*
- *What are the merits of Final Offer Arbitration in this context?*

I will try to be brief in order to save time to respond to your questions.

Consumers have a substantial interest in this legislation. Consumers have a huge stake in cable programming. They spend a large share of their waking hours watching television. The Federal Communications Commission (FCC) reported that the average household in recent years has tuned into television for over 8 hours a day, while the average family member watches television about four and a half hours daily. Senior citizens and below average income households exceed these averages. According to the American Association for Retired Persons, senior citizens average five and a half hours per day. The FCC reports that more than half of this is cable program viewing time.

Consumers spend a significant share of their income on cable television services and television equipment. According to Consumer Expenditure Surveys done by the U.S. Bureau of Labor Statistics, spending per household on cable television service amounted in 2005 to about $520 per year. Seniors age 65-74 spent even more. Average expenditure is well over 1% of average household income for all households and substantially more for households headed by seniors or below average income consumers. The average household spent another $105 on television equipment. As measured by overall consumer expenditure, share of income, or time devoted to it, cable television programming is a high priority consumer service and vital to their individual and collective well-being.

Markets for cable television services are not yet "workably competitive". The range of program choices available to consumers is now determined for the most part by cable companies that also own significant shares of the programming they carry. Congress has passed laws designed to make sure that Americans have access to diverse program sources and, in particular, to programming in which cable television companies do not have an economic interest. You will be told that "...the video market is fully competitive." That is a talking point of the cable industry's brief. But, before accepting it at face value, you should consider the facts that support, or in many cases, refute that categorical assertion.

There are two kinds of competition to cable systems – "intramodal" competition from other cable systems or "intermodal" competition from other technology platforms. There is very little "cable to cable competition" among rival cable companies. Cable systems have long been regarded as natural monopolies and few entrants have emerged to challenge incumbents with competing cable systems. In this context the FCC concluded categorically: "In the vast majority of communities, cable competition simply does not exist." Very few consumers can choose between competing cable companies.

Other program delivery platforms and providers – satellite, telephone, utility company, and municipalities — can deliver content to consumers. *Some* are present in *some* markets for *some*

consumers. Some consumers do, but most American households do not, enjoy the option of choosing from them. Much is made of the existence of these platforms by advocates of the view that "Cable is fully competitive!" But the most recent data from the FCC indicates that an overwhelming majority of Americans still rely on cable as their video program provider. Approximately 65 million households, or almost 70% of those who subscribe to an MVPD (multichannel video programming distributor) service, are cable subscribers. Direct broadcast satellite companies capture nearly thirty percent. Other platforms, including those provided by telcos, power companies or municipalities account for about 3%. Wireless video over cellular systems will grow, but is now negligible. (Data from FCC 2006 Report on Media Competition.)

In support of claims that "Cable is fully competitive!" advocates cite the presence and plans of telephone companies in the video distribution market. But, the facts suggest more plans and prospects than telco presence in the marketplace. At the end of the third quarter of this year, the AT&T U-verse system was available to fewer than five percent of US homes and had captured only 125,000 subscribers, the great majority of which are in Texas. By the same date Verizon reported signing up 717,000 customers for its fiber-based video service. Efforts of municipalities and power companies are cited as competitors of cable. But, they address scattered markets and fewer than 1% of US households.

It simply is not true that local video markets are fully competitive or, in many instances, even workably so. Cable operators have market power over price, programming and service quality – market power that is neither checked, nor substantially altered, by competition from other MVPD services. Some Americans have a choice of video program distributors. Many do not.

Several independent studies establish the existence of cable market power in distribution and related benefits of more open entry and intermodal rivalry. Consumers consistently express a preference to be able to choose between services of both legacy monopoly cable and telephone providers. And, they vote with their dollars when provided that opportunity. Cable rates, when unrestrained by competition, tend to go up faster, and in many cases, much faster than prices for other goods and services. US Bureau of Labor Statistics data indicate that cable rates have increased in the past decade about two and a half times as fast as the overall rate of inflation. Cable subscribers in Wisconsin have been subject to similar exercises of cable operator power over price. A survey this year of about two dozen Wisconsin communities found cable increases well above inflation rates. [1]

Independent experts outside the cable industry agree that cable rates reflect market power and are higher where there are no wireline alternatives. Where there is competition, cable rates tend to flatten or

decline in the face of alternatives, while service quality and diversity improves as rivals vie for subscribers' favor.

Cable firms discriminate against independent producers and in favor of their own programs. Large cable companies are vertically integrated into programming and are major providers of the content their systems offer. The FCC found in 2005 about 500 national programming networks. One in five was vertically integrated with one or more cable operators. Five of the top seven cable firms (Comcast, Time Warner, Cox, Cablevision, and Advance/Newhouse) held ownership interests in national program networks. Six of the top 20 non-broadcast video programming networks (ranked by subscribership) are vertically integrated with a cable operator. Of the 96 regional networks identified by the FCC, 44 networks (45.8 percent) were vertically integrated with at least one cable operator. Comcast has ownership interests in 14 (14.6 percent) regional networks. Cablevision has ownership interests in 13 (13.6 percent) regional networks. Time Warner has ownership interests in 10 (10.4 percent) regional networks. Cox has ownership interests in six (6.2 percent) regional networks.

Vertical integration may create efficiencies in production, distribution and marketing, but substantial downside costs are also well established in principle and practice. Drawing on a wealth of scholarly research, the FCC has concluded that detrimental effects of cable integration of program production and distribution "...can include unfair methods of competition, discriminatory conduct, and exclusive contracts that are the result of coercive activity."

The record is replete with largely uncontested indications of the exercise of market power by integrated cable/program suppliers via discrimination against independent program suppliers.[2] While differentiation in terms, product characteristics, prices and other elements of marketplace offers are commonplace and not *per se* objectionable, differentiation based solely, or substantially, on the affiliation of a customer or supplier, and without regard to comparative merits, is not in consumers' interest. It deprives them of options many would choose were they given the opportunity.

Economic discrimination by integrated cable operators takes both price and non-price forms of differentiation in terms offered affiliates vis-à-vis those offered independent program producers. Non-price discrimination involves imposition of "special" conditions on independent program suppliers, conditions that are not imposed on the operators' own program services.

According to testimony from numerous independent programmers, integrated cable operators frequently require independently produced programs, but not programs produced by affiliates, be substantially funded, "launched", or have other carriage agreements in place as conditions precedent to being carried on the cable network. Those requirements may be fatal, since investors like the comfort of carriage agreements covering a large subscriber base as a condition of providing financial support. Other discriminatory practices reported by independents include tiering or packaging that gives preferences to cable's own program affiliates. Independent programmers also report that cable operators insist on being awarded an equity stake in the subject programming as a condition of carriage.

To clarify the extent of price discrimination by integrated cable operators against independent program suppliers, we further analyzed evidence provided to the FCC by Hallmark Channel. The data compared fees paid by cable operators to different suppliers (an indicator of the value cable operators associated with the programming) to the Nielsen ratings for those same programming services (an indicator of public or consumer value assigned to the same programming). The differences establish the presence and scope of discrimination by Time Warner and Comcast in favor of their own affiliated programming services and against Hallmark programs.

Discrimination is reflected in a comparison of a) fees paid for and b) audience attracted by affiliated vs. nonaffiliated programming. The number of viewers is the major principal metric of the value of different programs. Consumers vote with their eyes. Although license fees need not reflect precisely the number of viewers, there is no reason to suppose that ownership of the programming should from a consumer perspective be a more important determinant of value than the audiences it attracts. Yet, that is precisely what the data suggest.

Hallmark Channel receives from cable operators, on average, three cents per cable subscriber for programming that is accorded by Nielsen a Prime Time Household rating of 1.1, which is defined by Nielsen as the "estimated percentage of the universe of TV households tuned to a program in the average minute." Concurrently (measured in April, 2007), Time Warner paid its CNN affiliate 44 cents (more than 14 times the average fee paid to Hallmark) for programming that attracted a Nielsen rating of 0.7. Thus, Time Warner paid its affiliate a fee 14 times greater for a prime time audience about 2/3 as great. Similarly, Comcast paid its affiliate (*G4 videogame tv*) twice as much for 20 percent of the audience attracted by Hallmark. Comcast paid its affiliated Golf Channel more than seven times the fee paid Hallmark for an audience less than twenty percent of Hallmarks' average prime time household viewers.

Most carriage agreements contain "most favored nation" clauses leading to price uniformity among major cable systems for a particular channel or program source. The Hallmark data are likely to reflect closely the structure and level of fees in carriage contracts for other independents. In short, the discrimination measured here appears to be a reasonable proxy for relations between integrated cable companies and other independent program suppliers.

The table below is derived from Hallmark data on fees paid for, and audiences attracted by, different program services. It shows first the results of dividing the average license fee paid to programmers by the program's Nielsen audience rating. That is a proxy for price paid per viewer for different services. Secondly, it expresses these proxies for "prices paid per viewer" for different services as a multiple of the price paid to Hallmark, the independent, non-affiliated program supplier.

INDEX OF ANTICOMPETITIVE CABLE DISCRIMINATION
Payment for Affiliated Vs. Independent Programming

CHANNEL	Affiliation	Fee per Prime Time Rating Point	Prime Time Payment Multiple
TNT	TW	0.49	18X
CNN	TW	0.63	23X
TBS	TW	0.33	12X
Cartoon Network	TW	0.13	5X
Court TV	TW	0.08	3X
Golf Channel	Comcast	1.15	42X
E!	Comcast	0.50	18X
style.	Comcast	0.60	22X
G4 Video Game	Comcast	0.30	11X
Hallmark Channel	Independent.	0.03	1X

Source: Calculated by American Consumer Institute from Hallmark data submitted to the Federal Communications Commission.

The last column indicates multiples of fees paid per viewer for affiliated programming versus fees paid per viewer for the independent programmer. In *all* cases the multiple exceeds three and ranges frequently into the twenties and beyond. The multiples indicate the premium paid to affiliates, but they are also an index of the degree of discrimination against non-affiliated programmers.

The differences in prices paid reflect the business objectives of the cable companies involved, *not* consumer valuations of the different programs.

Government should intervene on behalf consumers' interest in diverse programming. Recent studies of market data by competent, disinterested analysts of the structure, conduct and performance of cable system operators in markets for video program production and distribution are virtually unanimous on the question of cable market power over price and programming. It is fair to conclude from them that:

- There are serious imperfections in video program production and distribution markets;
- Market failures do now and will continue to impose costs on consumers;
- Regulatory and adjudicatory interventions are not adequate to protect consumers; and,
- Diversity and consumer choice in cable video programs being reduced substantially by market failures that are not fully offset by government action.

The basis for finding the incentive and ability of integrated suppliers to discriminate in the program market in ways that disserve consumers is diverse. Studies by the U.S. Government Accountability Office, FCC-sponsored studies, the FCC itself and scholars from academia, have found a) existence of cable firm market power, b) incentives for them to exercise it, and c) its actual exercise by vertically integrated cable systems in dealings with unaffiliated program suppliers.

Everywhere but in economics textbooks, firms have market power. Markets are never perfect. But, they need not be perfect, only that they work as well as or better than government planning and controls. Experience testifies loudly and clearly that well-meaning government remedies for market imperfections too often occasion side effects from unintended, unanticipated consequences whose costs dwarf any conceivable benefits.

Government's task here is one of harmonizing the imperfections of market processes with the infirmities of government interference in those processes. Inasmuch as government regulation is no sure antidote to market failure, your challenge is twofold: a) to identify the worst of market infirmities, and b) to apply only the most efficient, least-costly government remedies. I believe that final offer arbitration of the sort you are now considering is just such a remedy.

Final Offer arbitration is the solution to this market failure. It is an approach that has already been tried and by all indications has been quite successful. *Final offer* arbitration was adopted earlier by the FCC to resolve similar disputes between program distribution platform owners – both satellite and

cable networks – when it simply ordered the parties who are unable, for whatever reason, to forge program carriage agreements in private negotiations to submit to *final offer* arbitration.

There are several advantages to *final offer* arbitration compared to other forms of dispute resolution. The most notable is inherent in the incentive structure imposed on parties that heretofore were unable for whatever reason to reach an agreement. Disputants are impelled by the threat of failure to propose resolutions that are acceptable to them, rather than those that are most desirable. This fact alone brings the parties closer together.

Final offer arbitration eliminates differences in market power and financial resources between parties; it shortens the time needed to resolve disputes and hastens consumer receipt of benefits. It eliminates advantages to either party and costs to consumers, of delay, obfuscation, refusals to deal or bargain in good faith. Very importantly, *final offer* arbitration eliminates the exercise of buying power owing to one party's control over valuable assets – either distribution networks or specialized content – and helps to assure that consumers will not be forced to pay for the exercise of that power in the form of higher prices, lower quality programming and/or fewer options.

An ironic benefit of compulsory *final offer* arbitration is the prospect for diminished use of the process over time, as a result of firms finding it advantageous to negotiate settlements rather than to "roll the dice" and risk losing in an all-or-nothing gamble.

Knowledge of the results of previous arbitration combines over time yield *de facto* rules that effectively define "fair market value"; increases the prospect for successful negotiations; and, decreases the complexity of *final offer* arbitration if and when a party demands it.

Use of *final offer* arbitration requires fewer legal and other resources than typically used by other dispute resolution mechanisms. The process will benefit large and small independent programmers who are relieved of the need to meet difficult burdens of proof of discrimination that often require information to which they have no access in order to prove violations of the law by cable operators. *Final offer* arbitration shifts the focus of public policy to timely and economic solutions, and away from fault finding, proof, gaming regulatory processes and time-consuming litigation.

These and other advantages confer consumer benefits in the form of more timely resolution, lower cost, more certainty, more diversity, and, in the aggregate, greater sovereignty in program choice. That concludes my prepared remarks. Thank you again. I am happy to answer any questions.

NOTES

[1] Rate changes in selected Wisconsin markets are summarized below. They are available online at: http://www.wewantchoicewi.com/ratesupimage.html . Appleton: 10.7% since 2005; Baraboo: 6.5% since last year; Beloit: 5.2% since last year; De Pere: 96% since 1996; Dodgeville: 13.3% since last year; Fond du Lac: 6.7% since last year; Fort Atkinson: 6.5% since last year; Green Bay: 237% since 1996; Hartford: 6.7% since last year; Kenosha: 76.6% since 1999; La Crosse: 8.8% since last year Manitowoc: 140% since 1999; Marinette: 10.7% since 2005; Oshkosh: 10.7% since 2005; Portage: 6.5% since last year; Rhinelander: 94% since 2000; Ripon: 6.7% since last year; Superior: 43% since 2001; Wausau: 84% since 2001; West Bend: 6.7% since last year; Whitewater: 6.5% since last year; and, Wisconsin Rapids: 114% since 2002.

[2] Several independent programmers responded to the FCC's inquiry addressing conditions in the video distribution and programming markets (Notice of Proposed Rulemaking in the Matter of Leased Commercial Access and Development of Competition and Diversity in Video Programming Distribution and Carriage (MB Docket # 07-42). The comments detailed various discriminatory, non-pricing techniques applied to independent programmers vis-à-vis cable affiliates. A good sample of those claims is included in the comments of the National Alliance for Media Arts and Culture (NAMAC) and those of the America Channel. (Available online from the FCC web site.)

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EXECUTIVE DIRECTOR - Thomas Moore

Testimony of the Wisconsin Cable Communications Association
Before the Assembly Committee on Energy and Utilities
January 22, 2008

Thank you Chairman Montgomery and Committee members for the opportunity to appear today in opposition to Assembly Bill 604. My name is Tom Moore and I am the Executive Director of the Wisconsin Cable Communications Association. Our members include Time Warner Cable, Charter Communications, Comcast Cable, MediaCom as well as some 25 smaller regional and local cable providers in Wisconsin.

It seems to me there is really a discussion today going on at two levels – there is the issue regarding the NFL and BIG TEN Networks and whether or not they are currently carried by certain cable providers, and then there is Wisconsin Assembly Bill 604 which is before the committee today. I would like to address both issues, and I would like to start by focusing on the policy proposed in Assembly Bill 604.

Quite simply, we believe the bill fundamentally flawed on and should not be approved by this committee.

- The bill's provisions are clearly preempted by federal law and the Constitution of the United States.
- The bill is patently one-sided and unfair.
- The bill is bad public policy which would certainly lead to higher cable prices in Wisconsin.

First, let me turn to Howard Symons who will speak to the jurisdictional and Constitutional issues raised by the bill.

HOWARD'S TESTIMONY

We do not believe this is even a close call as to whether or not the Wisconsin government has authority to legislate in this area. Leaving aside the obvious jurisdictional problems with this bill, I want to address many other concerns which should be raised.

A ONE-SIDED BILL – MANDATORY CARRIAGE

Proponents of this bill have maintained that they are not attempting to choose a side in the dispute between some cable operators and the NFL Network, but are rather are establishing an independent third party to help resolve the dispute.

Unfortunately, this "legislative fix" does not facilitate a mutually agreeable dispute resolution process. On the contrary, it creates a right of carriage on cable systems by almost any programmer at a price dictated by an arbitrator. Ironically, it actually creates the problem it purports to solve – that is an unfair, unreasonable and discriminatory process with many harmful consequences to Wisconsin video customers.

AB 604 grants rights *only to video programmers*. Under the bill, an unaffiliated programmer could seek arbitration if *it believes* that a multichannel video programming distributor has not treated it in a fair, reasonable and nondiscriminatory manner concerning the amount proposed to by paid by the video distributor. The bill does not allow a cable operator to initiate an arbitration process at all.

The bill also does not permit the arbitrator to judge the reasonableness of the programmer's belief that it has been treated unfair. A programmer simply needs to self-assert it has been harmed - no need to present any evidence of harm.

The bill does not permit the cable operator to decline to carry the programmer if they cannot agree on the price, terms and conditions of carriage. And the bill does not permit the arbitrator to even consider the other terms of the negotiations such as where the channel will be carried or the length of the contract – though all of these will have a direct impact on the price of the service.

In fact, under this bill, the arbitrator's only role is to initiate a process, at the request of a programmer, which will result in the programmer's channel being carried on a cable operators system at a price determined by the arbitrator.

The provisions of the bill are like this: I knock on your door and announce that I am here to negotiate the sale of your home to me. I let you know the price I will pay and if you do not agree, I can take the issue to an arbitrator who will dictate a price of the sale of your home. You may argue that you do not want to sell your home to me but that would be irrelevant to the arbitration. I would have the right to commence a proceeding through which I could obtain your home at a price dictated by an arbitrator.

This bill is not about arbitration - it is about mandatory carriage of programming.

MANDATORY CARRIAGE IS BAD PUBLIC POLICY

We believe that mandatory carriage of programming content as dictated by this bill is really bad public policy. First of all, let's remember that we are talking about business negotiations which are taking part between two private parties, in the private sector in a business which is now highly competitive. And these negotiations between cable providers and programmers are not new, but in fact are a very normal part of our business. We do not believe it is the appropriate role of state government to intervene and in fact create a new law which grants special privileges to one party to the negotiations. This is an issue which should be resolved by market forces and not government intervention.

The view I am expressing is shared by an overwhelming majority of Wisconsin citizens as reported in two recent polls. You may have seen the poll paid for by WisPolitics which asked the question of likely voters on November 29 - the day of the Green Bay v. Dallas game -71% of the respondents said the state government should not get involved compared to only 24% who thought they should.

We found slightly more dramatic results when we paid a nationally recognized polling firm to ask the question of people who pay for video – both cable and satellite customers – and 85% of the people polled did not think the Wisconsin government should get involved in the issue.

I have included summaries from both polls in my handouts.

It is also important to note that while the discussion has been about the NFL or Big Ten Networks, the "arbitration" rights created for programmers under this bill extend to virtually all available cable programming. Assembly Bill 604 creates a right of arbitration for a any unaffiliated video programmer that offers a video channel that competes in the same "programming category" as a channel owned by a multichannel video programming distributor. The programming categories are so broad – sports, news and public affairs, music videos, consumer purchasing, religious, pay-per-view and any other entertainment - that any unaffiliated programmer could claim "comparability" to an affiliated programmer.

Thus under this bill virtually *any* programmer could seek arbitration which, as I already explained, leads to mandatory carriage at a price dictated by the arbitrator. Now there are hundreds of programming networks available and they would all like to be in cable's channel line-up and in fact all seek first to be placed on the expanded basic tire because it is the most widely purchased tier.

For example, the latest FCC Assessment of the Status of Competition in the Market for the Delivery of Video Programming that released March 3, 2006 and reports that in 2005, the FCC identified 531 satellite-delivered national programming networks, which is an increase of 143 over the 2004 total of 388 networks. Most any of these could seek to gain placement on the expanded basic tier by following the same arbitration process that the NFL Network would use. These include many shopping channels, "adult" entertainment channels, and many foreign channels such as Al Jazeera, the Dubai Satellite Channel, Beijing TV and Channel One Russia.

The industry has been moving over the past few years to create packages of like programming - grouped into tiers which can be purchased separately by customers depending on their interests. Examples are HD tiers, family tiers, faith & value tiers, movie tiers and sports tiers. The result is that we can offer our customers greater choice and flexibility while not making every customer pay an increased cost for programming they don't value as much.

I understand this bill is intended to allow the NFL or Big Ten Networks a way to force their way on to the expanded basic tier, but the way it is drafted it would also grant the same arbitration rights to virtually any network. The bill's result would be to move the industry in the opposite direction of choice and flexibility. Instead of increasing choices for our customers, the result of this bill would be to force cable operators to have one very large tier in place of small packages of like programming being offered today.

And the obvious result would be higher prices for cable customers. This Committee, lead by Representative Montgomery has worked so hard this Session to pass the Video Competition Act which is designed to increase choices for consumers and put downward pressure on video costs. This bill would have the opposite effect on both choice and costs. Any programmer that uses this state-mandated arbitration process would be adding costs to cable's channel line-up and there is no process under this bill to control the costs. The arbitrator has one job - which is to determine the price of the channel which will be placed wherever the programmer requests. One thing we know for sure about this bill – it will result in higher cable prices for Wisconsin video customers.

Maybe that's why the USA Today characterized the NFL Network's plan as a "pick-pocketing" scheme.

Maybe that is why the Green Bay Press-Gazette warned that "state legislators should think twice about entering this fray unless they want to force cable rates higher".

Maybe that is today's Wisconsin State Journal call this bill "unnecessary if not silly".

NFL, BIG TEN NETWORKS

Finally, I want to turn and address issues specifically related to the NFL and Big Ten Networks because obviously, these are the entities pushing for mandatory carriage with this bill.

Cable providers are in the video delivery business. Companies like Time Warner Cable and Charter Communications want to carry programming that any segment

of our customers want to see. Clearly, cable providers understand the value of sports programming to a large segment of our customers and that's why cable line-ups carry thousands of hours of professional and armature sports each year.

At the same time, cable operators need to be mindful of the costs and placement of programming in the line-up. The amount cable operators pay for programming is by far the single largest operating expense, and sports programming is leading the pack in terms of cost. Cable operators are trying hard to contain the soaring costs of sports programming so that it doesn't price basic cable TV service out of reach of our customers. The creation of a separate sports tier is one tool cable companies have used to contain the cost of programming. Sports tiers allow avid sports fans the ability to see the games they want without making every other cable customer pay higher cable rates for something they may not value as much.

Now, along comes the NFL and Big Ten Networks - new to the market as the number three and four most expensive cable networks being offered – and demanding they are placed on the most widely purchased tier. Now it is clear from the public comments made by companies like Time Warner Cable, Charter Communications and Comcast Cable that those companies want these networks available on their systems but they want to sell them on a sports tier for all the reasons I have just explained.

But those networks are refusing to budge on placement. Instead of working out terms with cable providers which would allow for carriage on sports tiers, they have come running to state Capitols to pull Legislators into their fight.

The NFL Network officials are telling anyone who would listen that they are in fact on the side of their fans. They want to be on the most widely viewed cable tier so that more of their fans can watch the games.

But let's look at the facts: The NFL games were available to anyone in Wisconsin with a TV set and a set of rabbit ears until last year. But with the new 2006 television contract negotiations, NFL fans began to lose access to games. The NFL decided to hold back eight second half season games for itself so that it could sell the games to fans who formerly could view the games for free over broadcast TV. Think about it – if the league was really concerned about fan accessibility to games, why did it hold back these eight games and put them on a costly cable

network, why did it allow Monday Night Football to move to ESPN? Why does the NFL not allow cable companies and their customer's access to the "NFL Sunday Ticket" package? Why does it allow CBS and FOX to alternate their "doubleheader" Sunday games to ensure higher ratings for the telecast? The answer is obvious – it is about money. It is about the league leveraging the popularity of professional football to increase revenue. I am not arguing the league doesn't have the right to maximize revenue. But please don't give them a pass when they come here before you and tell you they are standing up for the fans.

They own the rights to the games. They dictate the terms of coverage. They could fix this immediately by returning NFL games to broadcast TV. Why not a bill requiring the league to carry the games on broadcast TV?

The fact is the NFL overestimated the demand for their new network. NFL Commissioner Roger Goodell projected that the NFL Network would have over 50 million, and possibly 60 million subscribers by this time, but it is falling well short of those numbers. They carry eight NFL games a year and 357 days of re-runs and repeats and there is no guarantee your favorite team will play in one of those games. So now they have the audacity to run to government to solve the business dilemma of their very expensive and poorly rated network.

RECOMMENDATIONS FOR THE COMMITTEE

First, do not encourage their actions by pursuing this one-sided legislation. If the Network prevails in obtaining legislation to force mandatory coverage this could only be the start of more and more NFL games moving to pay TV. The same is true for the Big Ten Network. Surely the other major and even minor sports conference will attempt to follow the lead of the BTN. How many conference sports networks should Wisconsin cable customers have to support?

Second, do not take away cable's bargaining power. Whether it is the NFL, Big Ten or any of the hundreds of programming networks who could avail themselves of the arbitration rights created under this bill, the cable providers must have the means available to them to negotiate the best deals for our companies and our customers. The position many of our companies have taken to request carriage

on a sports tier happens to fall precisely in line with the views of the vast majority of people who purchase video either from a cable or satellite provider. We know this because a) we take a lot of effort to know our customers and b) we have done the polling in Wisconsin. The fact is, according to our polling which I have provided to the Committee, 75% of Wisconsin's cable or satellite customers believe the NFL should allow their local provider to carry the games on a sports tier.

Finally, help cable companies in our efforts to provide choice and flexibility for our customers while keeping the price of expanded basic cable affordable to Wisconsin consumers.

I am convinced that the intentions of the authors of AB 604 are good. We understand and sympathize with many sports fans across Wisconsin who want to watch the Badgers and Packers on TV. We are sports fans too and we want to have the games available on our channel line-up.

I urge you to not undercut our ability to continue to negotiate with cable programmers such as the NFL and Big Ten Networks as we seek terms of agreement which will balance the interests of all of our subscribers. Please let the market do what it does best and permit the parties to work towards a mutually agreeable solution to this issue.

Thank you again for the opportunity to testify on this issue. I would be happy to answer any questions by Committee members.

Wisconsin State Journal

THURSDAY
DECEMBER 20, 2007

OPINION

OUR OPINION

'FAN' bill is out of bounds

It was a bummer last month when the big Packers-Cowboys football game could not be seen on conventional or cable television in much of Wisconsin.

You had to sign up for satellite TV or walk down to a sports bar to catch the action on the NFL Network.

Now the same thing is happening with University of Wisconsin Badger basketball games. Some games will appear exclusively on the Big Ten Network, which major cable television providers Charter Communications and Time-Warner fail to carry because of stalled negotiations with the sports network.

It's frustrating and inconvenient. But it's not the end of the world. And it certainly isn't cause for rushed and showy legislation down at the state Capitol.

About two dozen Wisconsin politicians are pandering to sports fans by proposing a law they claim will end the sports "blackout" on some Packers and Badgers games.

The Senate Committee on Commerce, Utilities and Rail will hold a public hearing today on Senate Bill 343. The hearing is scheduled for 11 a.m. in room 411 South at the Capitol in Madison.

The bill aimed at getting more Packers and Badgers games on cable television would set a bad precedent for government meddling in the free market.

Chief sponsors Sen. Dave Hansen, D-Green Bay, and Rep. Kitty Rhoades, R-Hudson, have dubbed their proposal the Fair Access to Network (FAN) Act. Sen. Fred Risser, D-Madison, is a co-sponsor.

This unnecessary if not silly legislation would create an independent body to determine if certain television channels should be carried by cable providers.

The bill would set a bad precedent for government meddling in the free market. If two companies can't negotiate a private deal that makes financial sense for both of them, so be it. The government shouldn't be in the business of forcing private companies into a deal in which they can't control key terms of the contract.

It's also possible the bill is unenforceable or even unconstitutional.

Instead of dabbling in this private business dispute, state lawmakers should butt out. They should spend their time instead trying to encourage more market competition which leads to greater customer choice.

And in a big way, they've already done that. The Legislature recently approved the video competition bill. This bipartisan legislation will make it easier for providers to enter and expand in the marketplace. Customers will enjoy more choice and better prices than they would get without competition.

Those benefits will take some time to play out. But greater competition should shake loose a deal to make prime-time Packers and Badgers sports programming more accessible to average fans.

Go ahead fans, call your cable company or the Packers or UW-Madison to complain about the game blackouts when they occur.

But as for state lawmakers, your misguided attempt to force a fix on unwilling companies is out of bounds.

WNA Green Bay Press-Gazette: November 20, 2007 -Page 7a
Green Bay, WI

OUR VIEW

ISSUE:
Cable TV wars

Elected officials should sit this out

One more observation as local and state elected officials try to insert themselves into the dispute between the NFL and Big Ten networks and the state's two largest cable television providers:

The dispute is whether the networks are included in the systems' "basic" packages at a monthly price of about $2 per subscriber between the two networks, or whether the cable companies can put those channels into a premium package, where the subscribers have the option of paying the extra freight for the service.

The way the networks demand it, the companies would be forced to raise rates on every basic subscriber; the way the cable companies want it, subscribers would have a choice whether to pay the increase. Forcing it onto the basic package means a lot more money for the National Football League and Big Ten, of course, which is why they want it.

Village boards and state legislators should think twice about entering the fray, unless they want to force cable rates higher. Voters remember that sort of thing.

If government leaves it alone, the market will work it out eventually. Depending upon how it turns out, it may mean less popularity for the Big Ten or the NFL or for the cable companies. Are those issues where the government really needs to get involved?

WNA The Chippewa Herald, Chippewa Falls: November 6, 2007 -Page 6a
Chippewa Falls, WI

OUR VIEW

Politicians should stay out of business dispute

The University of Wisconsin's first big football game of the entire season, last Saturday's Big Ten Conference matchup with No. 1-rated Ohio State, wasn't available on television to a large segment of Badger fans.

Compared to a number of other issues that come before the Wisconsin Legislature each year, finding a way for Badgers fans to watch their team could be considered — to mix sports analogies — a home run. But when it comes to forcing two businesses to settle a financial dispute, the politicians should forget about even going up to bat.

There is something cruel about being able to watch the Badgers play losing teams most weeks and then not be able to see them finally play one of only two Top 25 opponents.

The Big Ten formed a television network this year, ostensibly to create another profit source. Oh, they'll say they're in it to better serve the fans, and provide a wider forum for less-popular sports. But let's face it, the TV network is mostly about finding another way to make money.

As with many other upstart networks, they ran into trouble when it came to getting the network on cable television systems.

Charter Communications and Time Warner, the state's two largest cable providers, want to put the network on a special sports tier that costs subscribers an extra fee. They say they're trying to keep cable bills down, but let's face it: a channel carrying Big Ten games probably has a lot more appeal in Wisconsin than a few dozen other channels customers are being forced to pay for.

Besides, both satellite TV systems found a way to put the Big Ten Network on its programming lineup.

There is something cruel about being able to watch the Badgers play teams with losing records most weeks and then not be able to see them finally play one of the league's two Top 25 teams. And while we sympathize with those fans who were left out in the cold Saturday, the Legislature has no business, so to speak, getting mixed up in a conflict between two businesses.

The state shouldn't legislate the cable companies must cave in to the Big Ten's demands, any more than it should force the league to fold and accept the cable provider's terms.

When enough cable customers drop their service for satellite TV, or when the Big Ten realizes it really needs to reach those cable customers, then the two parties will sit down and work out a deal. But what we have now is an old-fashioned standoff, and it's not the first time, either.

In fact, a Packers-Vikings game on the NFL Network last season produced the same angst.

It's regrettable that we fans are pawns in all of this, but the solu-

Blitzing the FCC

WSJ 11/19/07

Everyone knows the National Football League is full of tough guys, but that doesn't mean team owners are above whining to federal regulators when they don't get their way off the field.

The NFL Network calls a political play.

The league is currently upset that its eponymous television channel, the NFL Network, isn't getting wide distribution on basic cable. Instead, Time Warner and Comcast want to offer the network as part of their less popular sports tier of programming. The first NFL Network game of the season is on Thanksgiving, and the cable firms show no signs of giving in to the league's demands. The industry maintains that the NFL is charging cable companies too much money for them to offer the network on their basic tier without increasing subscription rates.

Dallas Cowboys owner Jerry Jones, whose team plays twice this season on the channel, has taken to calling for pigskin fans to drop cable operators and switch to satellite television, which runs a special package of NFL games each week. Perhaps the very prosperous league would do better to negotiate more favorable carriage terms with Time Warner and Comcast, though we suppose Mr. Jones has every right to engage in a PR war if he thinks it'll help his bargaining position.

More troubling is the NFL's attempt to involve government regulators in what is essentially a commercial dispute. The league has taken its complaints to the Federal Communications Commission in hopes that the agency will force the hand of cable operators. A media campaign against cable is one thing, but seeking regulatory leverage in a private-sector dispute is unsportsman-like conduct. We trust the FCC knows the difference and will respond accordingly.

WNA The Janesville Gazette: November 6, 2007 -Page 8a
Janesville, WI

OUR VIEWS

Fans should keep blitz on cable TV

Badger and Packer fans are up in arms, and it isn't because they're doing the traditional "wave." Instead, they're letting their wallets do the talking and waving goodbye to cable TV.

Complaining about cable TV is a Badger State spectator sport. If ever-increasing costs don't grate on subscribers, service problems do.

Now, fans who are missing key Badger and Packer games on Wisconsin's cable TV heavyweights, Charter and Time Warner, are pouring into satellite TV offices.

Let's face it. Televised games have spoiled us. Our favorite football games, as well as Badger men's basketball games, sell out. Fans who don't have tickets have been able to catch the action in their living rooms. A decade or two ago, few Badger games were televised. In recent years, most have been.

The new Big Ten Network is changing

Al Hoch/ahoch@gazetteextra.com

How many viewers will cable TV companies lose to satellite TV before getting the message from fans?

the television landscape. Last Saturday's football game between Wisconsin and No. 1-ranked Ohio State was available only on the Big Ten Network. This season, only that network will carry 20 Badger men's basketball games.

Couple that with the Nov. 29 contest between the Packers and Dallas Cowboys being available only on the NFL Network, and, well, lawmakers think it's time to get in the game.

Last week, lawmakers fresh off their, ahem, swift approval of a state budget started moving quickly to enact bipartisan legislation. They want arbitration to help settle disputes between sports networks and cable companies.

Such legislation seems reasonable. But this isn't a matter of public health or safety. This tussle is all about money, and we would prefer to let it play out through market forces.

The Big Ten Network wants cable companies to carry its games on expanded basic packages without adding to customer charges. Charter and Time Warner argue that the price, about $1.10 per customer, would make the Big Ten Network one of the most expensive basic channels and that adding it would force nonfans to help pay for a station they aren't interested in.

But many customers of basic packages pay for channels they seldom or never watch. And if small cable TV companies such as those in Westby and Richland Center can add the Big Ten Network, why can't Charter and Time Warner?

They can. And if enough residents place satellite dishes on their homes or blitz Charter and Time Warner with complaints, the companies will get the message. To its credit, the Big Ten Network's $1.10 per customer fee is negotiable, President Mark Silverman told sports writer Tom Miller in Friday's Gazette.

So keep talking, and get it done.

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THE TARRANCE GROUP
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MEMORANDUM

TO: WISCONSIN CABLE COMMUNICATIONS ASSOCIATION

FROM: BRIAN TRINGALI
KATIE HANDEL

DATE: DECEMBER 14, 2007

RE: KEY FINDINGS FROM SURVEY OF WISCONSIN TV CONSUMERS ABOUT THE DISPUTE BETWEEN CABLE PROVIDERS AND THE NFL

The Tarrance Group completed a survey of adults in Wisconsin to assess views held by the public and test messages about the dispute between cable providers and The National Football League (NFL) over the placement of the NFL Network in cable lineup options. A telephone survey of N=600 adults was conducted with respondents 18 years or older, involved in television entertainment decisions for the household and subscribed to pay-TV services. A random sample of this type is likely to yield a margin of error of ± 4.1%. Responses to this survey were gathered December 9 – 11, 2007.

This survey found that a majority of all Wisconsin adults with pay-TV services are aware of the dispute between cable providers and the NFL. When provided with the information that this dispute resulted in missing a Green Bay Packers football game this season and two (2) college bowl games, adults are divided in their level of concern. Further highlighting how the dispute is perceived by the public, when provided with background information and the basic argument of each side, a majority of adults (50%) side with cable providers and 44% indicate their view is closer to the NFL's argument. Even with high awareness and a division of public opinion, there is a willingness among Wisconsin adults to allow market powers to determine the outcome of this dispute.

These findings are based primarily on the specific results below:

- Adults in Wisconsin, with pay-TV service, are satisfied with their current provider. Forty-two percent (42%) indicated they are very satisfied, forty-five percent (45%) are somewhat satisfied, and only 12% are not too or not at all satisfied. Of adults with pay-TV service, 68% subscribe to cable and 32% subscribe to satellite.

- Sixty-five percent (65%) of Wisconsin adults with pay-TV services are aware of the recent dispute between the NFL and cable providers over adding the NFL Network to expanded basic cable line-ups and 35% remain unaware. Awareness of the dispute is higher among cable customers (69%) than satellite customers (57%).

- Wisconsin adults are split in their level of concern about the impact of the on-going dispute. Adults outside the Green Bay Packers home market (those affected by a lack of Packers coverage) were asked to gauge the level of concern if their cable provider did not carry the NFL Network which resulted in missing a Green Bay Packers football game this season and two (2) college bowl games. Of adults outside the Packers home market, 29% are extremely concerned, 27% very concerned, 13% somewhat concerned and 31% are not at all concerned. Satellite customers are more likely to be concerned with 35% who are extremely concerned compared to cable customers at 25% extremely concerned. Those likely to be not all concerned include women (36%), seniors (38%), and those who watch one (1) professional football game a week (39%).

- Respondents were provided with the following background explanation:

> "The National Football League sells the right to televise NFL football games to major networks. In 2003, the NFL Network was created and currently holds the right to broadcast eight regular season games. With the exception of the media market where the two participating teams call home, for example Green Bay, these games will not be televised on any other major network. As you may or may not know, the NFL and cable providers disagree over whether the NFL Network should be offered as part of an expanded basic cable subscription or as part of an optional sports package."

Respondents were then read two opposing viewpoints about the dispute and asked to indicate who they would side with based on hearing these positions (viewpoints were rotated and read):

> "Cable providers want to include the NFL Network in a digital sports package – charging only customers who subscribe to additional sports coverage. This way, cable TV customers who do not want the NFL Network do not have to pay for it, and cable TV customers who do want the NFL Network can buy the optional sports package."
>
> (OR)
>
> "The NFL wants cable providers to include the NFL Network in the expanded basic cable package and share this additional cost among all customers."

A simple majority (50%) of Wisconsin adults indicate that after hearing the background explanation and opposing viewpoints of the dispute they would side with the cable providers. With a 6-point gap, forty-four percent (44%) of adults indicate they would side with the NFL. Opinions over the dispute are held strongly, indicating a solidification of positions. Thirty-eight percent (38%) of adults agree strongly with the cable providers and 32% agree strongly with the NFL's position. Those more likely to side with cable providers are adults outside of the Packers home market (54%), men (54%), working men (57%), single (58%) and those who watch one (1) professional football game a week (57%).

- The following selected messages highlight a willingness among respondents to allow cable providers and the NFL to settle the dispute through the usual process of market negotiations. There is strong intensity behind allowing customer and company interests to settle the dispute shown by the overwhelming agreement (85%) that the government should stay out of it and 72% feeling strongly so. Further, three-fourths of adults (75%) agree that precedent has already been set on resolving this dispute.

Informative Statements	Agree	Unsure	Disagree
The NFL has already allowed the largest cable company in the country to carry the games on an optional sports tier. It should do the same for your cable provider.	75%	8%	18%
The NFL wants the government and bureaucrats to get involved and make cable providers comply with their demands. The government should stay out of the dispute and let consumers and the companies figure it out.	85%	3%	12%

- Further, there is almost universal agreement that only customers who want additional sports coverage should have to pay the additional and high costs demanded by the NFL.

Informative Statements	Agree	Unsure	Disagree
If cable providers give in to the NFL, even customers who already have access to all Green Bay Packers games, will have to pay for the cost of the NFL Network on expanded basic cable and that is not fair.	77%	4%	19%
If the NFL Network is carried as part of the expanded basic cable package, all customers will pay the extra cost. Only customers who want additional sports coverage should have to pay.	71%	4%	26%
The NFL is demanding tens of millions a year for just 8 regular season games. This is too much money to expect cable customers to pay for this programming.	84%	4%	12%

WisPolitics/Checkpoint Poll: State should stay out of cable dispute
12/11/2007

Despite much of the state missing the Green Bay Packers' showdown with the Dallas Cowboys on the NFL Network and the prospect of not seeing 20 Wisconsin men's basketball games scheduled for the Big Ten Network this season, likely voters don't have much desire for state lawmakers to get involved in the channels' dispute with cable providers, according to a new WisPolitics/Checkpoint survey.

Seventy-one percent of respondents said they don't want the state to get involved in the disputes, while 24 percent said it should. The remaining 5 percent had no opinion or no answer.

The telephone survey of 400 likely voters statewide was conducted Nov. 29-Dec. 4. It has a margin of error of plus or minus 5 percentage points. The poll was conducted as awareness of the issue was high: the Packers-Cowboys game took place Nov. 29 and could only be seen by satellite TV subscribers on the NFL Network and on local television in Green Bay and Milwaukee, which the NFL considers to be the Packers' home market.

The respondents were asked: This year some Wisconsin residents have been unable to watch certain Green Bay Packers and University of Wisconsin football and basketball games due to a dispute between the Big 10 Network and NFL Network and large cable companies like Time Warner and Charter Communications. Two state legislators have proposed a law to provide a third-party arbitrator to settle disputes between cable companies and independent programmers. Do you think the state should get involved in the dispute or should the cable companies and the network work out the situation on their own?

The results:

The state should get involved, 24 percent Cable companies and networks should work out situation on own, 71 percent No answer/no opinion, 5 percent

*See the polling memo: http://www.wispolitics.com/index.iml?Article=112444

– WisPolitics.com/Checkpoint poll results are a subscriber-only product of WisPolitics.com. For information on subscribing to WisPolitics.com products, contact: Jim Greer at greer@wispolitics.com and 608-237-6296.

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

December 19, 2007

Mr. Roger Goodell
Commissioner
National Football League
280 Park Avenue
New York, NY 10017

Dear Commissioner Goodell:

We write today to express concern that the National Football League is exercising its substantial market power to the detriment of consumers. Specifically, we are concerned that the NFL member teams are using the NFL Network, to restrict the output of game programming. In an effort to obtain carriage of the NFL Network by all cable and satellite providers as part of their basic programming package, the NFL will air eight late-season games exclusively on the NFL Network. Forcing providers to carry the NFL Network as part of their basic programming packages would mean that all their customers, even ones not interested in the programming, would have to pay for it.

The NFL has reportedly sought to increase the pressure on satellite and cable providers by demanding that local broadcast network affiliates ensure that their distribution of these games is limited to narrowly defined local markets. This will mean that consumers in our home states will not have the choice of seeing these late season games. Residents of Vermont will not be able to see what may be an historic contest between the New England Patriots and the New York Giants. Likewise, residents of Allegheny, Armstrong, Beaver, Butler, Fayette, Forest, Greene, Indiana, Lawrence, Venango, Washington and Westmoreland counties in Pennsylvania will not be able to see the important match-up between the Pittsburgh Steelers and the St. Louis Rams.

This decision to limit the output of professional football game programming appears designed to sustain and strengthen the market power of the NFL and its member teams. In accordance with the decision of the Third Circuit Court of Appeals in *Shaw v. Dallas Cowboys*, 172 F.3d 299 (3d Cir. 1999), the sale of broadcast rights to satellite and cable providers is not covered by the NFL's antitrust immunity. As you know, we have previously expressed concern about the NFL member teams restricting the output of game programming. Almost exactly a year ago, we held a hearing focused on the NFL Network as well as the efforts of the NFL to restrict output through its exclusive sale of the Sunday Ticket. At that hearing, Stanford University Professor Roger Noll, one of the Nation's foremost experts in sports economics and regulatory policy, characterized the NFL Network as "a profit-enhancing reduction in output in the sense that the game that is on

NFL Network, the eight games, will be available to fewer people than had those games been offered on broadcast television."

The NFL appears to be moving incrementally closer to limiting distribution of its programming to subscription television. Businesses are generally free to set their own prices and to decide with whom to deal, but unlike most other businesses, the NFL and its member teams have long been beneficiaries of exemptions from some aspects of federal antitrust law relating to broadcast rights to their games. These exemptions may have made sense at one time, when leagues were far less commercialized and were committed to making their television rights available for free, over-the-air broadcast. Now that the NFL is adopting strategies to limit distribution of game programming to their own networks, Congress may need to reexamine the need and desirability of their continued exemption from the Nation's antitrust laws.

We ask that you take prompt action to make games like the Patriots-Giants and Steelers-Rams games more broadly available than just on the NFL Channel. We also ask you to provide us with a justification for the decision by the NFL and its member teams to restrict distribution of game programming in light of the fact that such conduct is not immune from the antitrust laws.

Sincerely,

Arlen Specter

Patrick Leahy

Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers' Association • 1911
Wisconsin Council of Safety • 1923
Wisconsin State Chamber of Commerce • 1929

James S. Haney
President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Marketing & Membership

Michael R. Shoys
Vice President
Administration

To: Chairperson Jeff Plale
Members of the Senate Committee on Commerce, Utilities and Rail
From: R.J. Pirlot, Director of Legislative Relations
Date: December 20, 2007
Subject: **Oppose Senate Bill 343.**

Wisconsin Manufacturers and Commerce (WMC) is the largest representative of Wisconsin employers. Our membership is a broad cross-section of the state's economic activity and our members employ approximately one-quarter of the state's private-sector workforce.

Senate Bill (SB) 343 would create binding arbitration rights to settle disputes between video programmers and multichannel video programming distributors. Under the bill, a video programmer which believes that a multichannel video programming distributor has not treated the programmer in a "fair, reasonable, and nondiscriminatory manner" regarding how much the distributor will pay the programmer for programming may force the distributor into binding arbitration. In such a dispute, the arbitrator would have the power to choose how much the distributor would pay for the addition or renewal of the programming in question.

Sports Fans Are Understandably Upset

As a result of a still-unsettled dispute between cable television providers, such as Time Warner and Charter Communications, and the NFL network, some Wisconsin football fans have not been able to watch, on their cable televisions, all of the games they would like to see. For example, Green Bay Packers fans in parts of Wisconsin were understandably upset that their cable television provider did not afford them an opportunity to view the recent game between the Packers and the Dallas Cowboys.

Unfortunately, fan frustration has lead some state legislators to believe that the appropriate way to settle this dispute is by state action. As frustrated as sports fans are that this dispute is ongoing, no legitimate state interest is advanced by advancing a legislative remedy for, ultimately, what is a private commercial disagreement.

Sports Fans Have Alternatives

Sports fans, as the NFL Network's "Football 24.7" website points out, have alternatives. In Wisconsin, today, many disgruntled cable television customers can drop their cable subscriptions and, instead, obtain their programming via satellite. The Football 24.7 website contains helpful links to DIRECTV and the Dish Network, satellite television providers which offer the NFL Network.

More Alternatives Forthcoming

In addition to the satellite television providers noted, above, more video services competition is on the way. The Legislature just concluded its work on Assembly

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Bill (AB) 207, legislation which will foster more competition in the video services market by allowing companies, such as telecommunications company AT&T, to enter into statewide franchise agreements for the provision of video services. This is good news for Wisconsin consumers, and WMC commends the Legislature for passing AB 207 and we have respectfully requested Governor Doyle sign AB 207 into law.

State Has No Business Meddling in a Private Commercial Dispute

Fundamentally, and the root of WMC's opposition to SB 343, is that the state should not meddle in what is a private commercial dispute. Resolution of this dispute should be left up to the NFL Network and the cable companies. It is up to these companies to negotiate how this programming will be offered and how customers will be charged. WMC sincerely hopes the parties come to an agreement but, as pointed out earlier, alternatives to cable television programming exist and more are forthcoming should the issue *not* be resolved.

Legislation like SB 343 would set a disturbing precedent for government interference in private commercial disputes and negotiations. If SB 343 makes sense, what other private commercial disputes should be settled by binding arbitration, should one party request it? What kind of beer is sold in Miller Park? Which kinds of hotdogs are sold here in Madison at Mallards games? Should Usinger's or Johnsonville brats be sold at Lambeau Field? How Target and WalMart decide to stock their shelves? Where is the endpoint to this rationale?

WMC respectfully urges you to oppose Senate Bill 343.

MMAC
Metropolitan Milwaukee
Association of Commerce

DATE: **DECEMBER 19, 2007**

TO: **SENATE COMMITTEE ON COMMERCE, UTILITIES AND RAIL**

FROM: **STEVE BAAS, GOVERNMENT AFFAIRS DIRECTOR**

RE: **SB 343**

On behalf of the Metropolitan Milwaukee Association of Commerce (MMAC) I urge your opposition to SB343, subjecting disputes between cable companies and those who provide programming to government-mandated arbitration.

The MMAC represents over 2000 member businesses employing over 300,000 workers throughout the metropolitan Milwaukee area. As such, we are wary of any legislation that empowers government interference in free market transactions of goods and services, and support such intervention only in cases of the most critical public necessity. SB343 empowers government intrusion into contract negotiations between private companies concerning sports and entertainment programming. We strongly believe such an intrusion is gross overexertion of government authority.

While we understand the frustration of Wisconsin sports fans over the pace of negotiations between major cable companies and the NFL and Big Ten Networks, this frustration does not justify government intervention into these negotiations. Television programming, its cost to consumers, and the manner in which it is provided by a cable company, just like the products and services provided by any other business, should be determined by that business and the market – not by government. The government has as little business telling cable companies how and whether they must carry the NFL Network as it would telling the NFL that it must offer its Sunday Ticket programming in the US over basic cable systems rather than exclusively through Dish Network.

Thank you again for your attention to our concerns on this matter. We hope you will join us in opposing this bill and its inappropriate government meddling into this free market negotiation.

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